

# **CITIES AND TOWNS BULLETIN**

## **AND UNIFORM COMPLIANCE GUIDELINES**

### **ISSUED BY STATE BOARD OF ACCOUNTS**

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September 1998

#### JUNE TRAINING SCHOOL

The State Board of Accounts extends its deepest appreciation to the officers and committees of the Indiana League of Municipal Clerks and Treasurers for making the arrangements and handling the registration at the school. Next year's June Training School will be held in Fort Wayne as part of the League's Annual Conference during the week of June 21 through June 25.

#### INVESTMENT OF CITY AND TOWN COURT FUNDS

The State's portion of the court costs, along with the State fees sent directly to the Auditor of State, may be invested by the Court Clerk while awaiting transmittal to the State.

The interest earned should be receipted to the city or town general fund. Since the city or town court budget is a department within the general fund budget, it is possible that (with common council or town council approval) the interest income generated could be taken into consideration when reviewing the court's requirements during the annual budget process.

#### COMPENSATION - EMPLOYEE TIME OFF FOR JURY DUTY OR AS SUBPOENAED WITNESS

Since there are no statutory references applying to these situations, the following is the audit position of the State Board of Accounts. Any of the following procedures would be acceptable:

1. The employee could receive the full amount of his/her regular salary and not claim compensation for serving as a juror or a witness.
2. The employee could receive the compensation for serving as a juror or witness and the amount received (excluding mileage reimbursement) could be deducted from his/her regular salary.
3. The employee could receive the full amount of his/her regular salary and then, in turn, turn over the warrant received for serving as a juror or witness to the proper fiscal officer. The fiscal officer would receipt the warrant into the fund from which the regular salary was paid. This procedure would not permit the appropriation to be increased by the amount of the receipt. (This procedure will not be possible if any mileage reimbursement is included in the warrant.)

#### DEFERRED COMPENSATION PLANS

Public Law 15, Acts of 1998, which added IC 5-10-1.1-9, requires all amounts held under any deferred compensation plan established under IC 5-10-1.1 to be held for the exclusive benefit of participants of the plan and their beneficiaries, as required by Section 457(g) of the Internal Revenue Code. If your city or town provides such plan, please review the terms of the plan to assure compliance with this public law.

### VOLUNTEER FIREFIGHTERS INSURANCE COVERAGE

Under the provisions of IC 36-8-12, local governmental units are required to provide coverage for employees. However, the question of whether or not the governmental unit is required to pay for such coverage directly to the insurance carrier is controlled by the contractual arrangement between the unit and the volunteer fire company. Whether or not individual firefighters are liable for payment of premiums for such coverage can only be determined on a case by case basis based on the contract in force. Therefore, individual volunteer firefighters should not procure individual insurance without first checking as to the status of the contractual relationship with the unit. If such payment is made by volunteer firefighters and is not authorized, it may not be subject to reimbursement by the unit. We find nothing that statutorily restricts the availability of this insurance coverage to one particular agent or company.

### CITY AND TOWN COURT COST FUND

The following questions concerning the distribution of the City and Town Court Cost Fund by the County Auditor have been asked by City, Town and County officials. These questions, along with our audit positions, are as follows:

Question No. 1: What must a municipality do to qualify for a share of the City and Town Court Cost Fund?

Audit Position: A municipality must maintain a law enforcement agency and prosecute at least fifty percent (50%) of its ordinance violations in a Circuit, Superior, or County Court located in the County. The County Auditor shall determine the amount to be distributed to each qualified city and town. (IC 33-19-7-3)

Question No. 2: Does a City or Town Ordinance violation filed in the County Court qualify the City or Town to receive such funds even if the case is dismissed by City or Town?

Audit Position: No. The City must prosecute the case in order to qualify.

Question No. 3: In which semiannual period does the City or Town receive a share of such funds assuming only one (1) case is filed? Is it the period in which the case was filed or is it the period in which it was prosecuted?

Audit Position: The period in which the case was prosecuted would govern the period of distribution. Distributions are to be made semiannually (June and December) for the previous six (6) months collections. If no City or Town qualifies for the distribution in a particular semiannual period, the money remains in the fund for distribution in a subsequent semiannual distribution.

### TOWN MARSHAL - SPECIAL DEATH BENEFIT FUND

A Special Death Benefit Fund was established by the State in 1988 for the purpose of paying lump sum death benefits of one hundred fifty thousand dollars (\$150,000) to the surviving spouse, or, if there is no surviving spouse, to the surviving children of the public safety officer who dies in the line of duty.

Public safety officer is defined to mean " a state police officer, county sheriff, county police officer, correctional officer, excise police officer, county police reserve officer, city police reserve officer, conservation enforcement officer, town marshal, deputy town marshal, or state university police officer appointed under IC 20-12-3.5." (Our Emphasis)

The fund consists of special death benefit fees charged by a court clerk for filing bail bonds, either cash or surety.

### CLERK-TREASURER'S NOTARY POWERS

Notaries public, judges of courts, in their respective jurisdictions, mayors, clerks and clerk-treasurers of towns and cities, in their respective towns and cities, clerks of circuit courts, master commissioners, in their respective counties, judges of United States district courts of Indiana, in their respective jurisdictions, and United States commissioners appointed for any United States district court of Indiana, in their respective jurisdictions, are authorized to administer oaths and take acknowledgments generally, pertaining to all matters where an oath is required.

Since it appears IC 33-16-4-1 grants clerks and clerk-treasurers virtually identical powers and authority as notary publics in matters involving acknowledgments and oaths, there would be no need for a clerk or clerk-treasurer to qualify as a notary public.

### MUNICIPAL ELECTION EXPENSES - ALL CITIES AND TOWNS 3,500 AND OVER

The expenses of city and large town primaries and elections are paid by the county with each city and large town conducting a primary or election being billed for its share of the expenses. Each city or large town should budget as one item, the local amount of such expenses under "Other Services and Charges" in the budget for the election year for the total estimated amount to be paid to the county. The county auditor or clerk of the circuit court can supply information as to the amount to be included for primary and election expenses. IC 3-5-3-8 and IC 3-5-3-9 provides the procedure for the county to allocate primary and election costs to all cities and those towns with populations of 3,500 and over.

Your City or Town Attorney and the State Election Board should be consulted for guidance on questions related to city elections and for town elections in those towns with populations of 3,500 and over.

### MUNICIPAL ELECTION EXPENSES - TOWNS UNDER 3,500

The expenses of a town primary and election in a town with less than 3,500 population are to be paid directly by the town. It is recommended that the total amount of such expenses be budgeted as one item under "Other Services and Charges" in the General Fund. (IC 3-10-7-16 and IC 3-10-7-17)

IC 3-10-6 provides that in towns with a population of 3,500 or more, town officials shall be nominated at a primary elections pursuant to the laws governing city primary elections. Towns with less than 3,500 populations do not fall within the foregoing classification and the town officers are nominated by party conventions (IC 3-8-5) or by petition (IC 3-8-6).

The following are some Indiana Code sections of interest for towns under 3,500 populations:

IC 3-8-5	-Nomination of Candidates by Convention
IC 3-8-6	-Nomination by Petition
IC 3-10-7-7	-Town Elections Boards, Establishment, Members
IC 3-10-7-4	-Conduct of Elections
IC 3-10-7-16	-Employees
IC 3-10-7-17	-Purchase of Materials, Supplies, Equipment
IC 3-10-7-20	-Compensation of Members
IC 3-10-7-21	-Powers and Duties

The Town Attorney and the State Election Board should be consulted for guidelines on any questions related to town elections.

### MUNICIPAL ELECTION EXPENSES - TOWNS UNDER 500

IC 3-10-7-5.5 provides that the county election board shall conduct the municipal election unless the town council establishes a town election board to conduct the election.

### PUBLIC NOTICE ADVERTISING - POSTING NOTICES

If there is only one (1) newspaper published in the municipality, then publication of notices in that newspaper alone is sufficient. If no newspaper is published in the municipality then publication shall be made in a newspaper published in the county in which the municipality is located and that circulates within the municipality. The notice shall also be posted:

- (1) at or near the city or town hall; and
- (2) at the post office in the municipality (or at the bank if there is no post office). [IC 5-3-1-4(c)]

In case any officer charged with the duty of publishing any notice required by law is unable to procure advertisement at the price fixed by law, or the newspaper refuses to publish the advertisement, it is sufficient for the officer to post printed notices in three (3) prominent places in the political subdivision, instead of advertisement in newspapers. [IC 5-3-1-2(k)]

### DONATIONS TO FOUNDATIONS

Notwithstanding IC 8-1.5-2-6(d), a unit may donate the proceeds from the sale of a utility or facility or from a grant, a gift, a donation, an endowment, a bequest, or a trust to a foundation under the following conditions:

- (1) The foundation is a charitable nonprofit community foundation.
- (2) The foundation retains all rights to the donation, including investment powers.
- (3) The foundation agrees to do the following:
  - (A) Hold the donation as a permanent endowment.
  - (B) Distribute the income from the donation only to the unit as directed by resolution of the fiscal body of the unit.
  - (C) Return the donation to the general fund of the unit if the foundation:
    - (i) Loses the foundation's status as a public charitable organization;
    - (ii) Is liquidated; or
    - (iii) Violates any condition of the endowment set by the fiscal body of the unit.

A unit may use income received from a community foundation only for purposes of the unit. (IC 36-1-14)

IC 36-1-2-23 defines a unit to mean a county, city or town, or township.

### DIPHTHERIA, TETANUS, AND RABIES VACCINES

IC 16-41-19-2 requires all cities and towns to supply without charge diphtheria, scarlet fever, and tetanus (lockjaw) antitoxin and rabies vaccine to persons financially unable to purchase the antitoxin or vaccine, upon the application of a licensed physician.

All costs that are incurred in furnishing the aforementioned antitoxin or vaccines shall be paid by the appropriate city or town against which a physician's application form is issued from general funds not otherwise appropriated without appropriations.

An Application and Claim for Biologicals, State Form No. 43918, will be filed by the physician with the city or town fiscal officer if such antitoxins or vaccines are supplied.

### INSPECTOR OF WEIGHTS AND MEASURES

IC 36-8-2-12 allows cities and towns to establish, maintain, and operate a weights and measures standards control system. However, a city or town may not establish fees for inspections and tests relating to weights and measures.

The legislative body of a city having a population of at least twenty thousand (20,000) may provide for the appointment by the board of public safety of an inspector of weights and measures and provide for the inspector's compensation and for the necessary apparatus and expenses to be paid out of the city treasury. The inspector of weights and measures shall serve continuously during good behavior under the provisions of IC 36-8-3-4 governing the fire and police force. The inspector of weights and measures shall not be removed for any political reason and only for good and sufficient cause after an opportunity for hearing is given by the board of public safety. However, this does not affect the power of the division of weights and measures of the state department of health to discharge county or city inspectors of weights and measures under IC 24-6-3-6.

A person may not be appointed as a city inspector of weights and measures unless the person is approved by the division of weights and measures. A city inspector of weights and measures may not be removed without the approval and consent of the state division of weights and measures.

The same person may be employed as a city and county inspector of weights and measures. If the same person is so employed, the compensation and expenses of the inspector shall be divided between the city and county, as agreed upon under IC 36-1-7.

If a city having a population of at least twenty thousand (20,000) does not provide for the appointment of an inspector of weights and measures, the executive of the county containing the city shall require the county inspector of weights and measures to perform those duties for that city. (IC 24-6-3-5)

The county or city inspector of weights and measures when appointed shall be a deputy inspector under the direction of the state division of weights and measures. The inspector shall take charge of and safely keep the county or city standards. When not otherwise provided by law, the county or city inspector of weights and measures shall have the power within the county or city to inspect, test, try and ascertain if they are correct, all weights, scales, beams, measures of every kind, instruments or mechanical devices for measurement and the tools, appliances or accessories, connected with any or all such instruments or measurements used or employed within the county or city by any proprietor, agent, lessee or employee in determining the size, quantity, extent or measurement of quantities, things, produce, [and] articles for distribution or consumption offered or submitted by such person or persons for sale, for hire or award. The inspector shall at least once in each year and as much oftener as he may deem necessary see that the weights, measures and all apparatus used in the county or city are correct. The county or city inspector of weights and measures shall keep a complete record of the work done by the inspector and shall make a monthly and annual report to the division and the board of county commissioners or to the mayor. The annual report shall be duly sworn and submitted to the division of weights and measurers, not later than the fifteenth of October. Upon appointment, the county or city inspector of weights and measures shall, in the manner prescribe by IC 5-4-1, give a bond for the faithful performance of the duties of the office. The county inspector of weights and measures shall have jurisdiction over the whole county except as to incorporated cities which have provided for a city inspector of weights and measures. (IC 24-6-3-5)